claims were within the security afforded. *Simms* v. *Ramsey*, 90 S. E. 842 (W. Va.).

A mortgage may be made to joint mortgagees to secure claims to which they are severally entitled. *Adams* v. *Niemann*, 46 Mich. 135, 8 N. W. 719; *Sumner* v. *Dalton*, 58 N. H. 295. It is frequently held, however, that they take, not as joint tenants, but as tenants in common, each getting an interest in proportion to his claim. *Brown* v. *Bates*, 55 Me. 520; *Farwell* v. *Warren*, 76 Wis. 527, 45 N. W. 217. See JONES, MORTGAGES, § 135. Such a mortgage affords adequate protection, since it may only be discharged in conformity to the rights secured. *Waterman* v. *Webster*, 108 N. Y. 157, 15 N. E. 380. The principal case raises a further complication in the existence of two distinct sets of rights. The trust deed purports to secure joint notes, while the ultimate claims sought to be protected are several. Now anything which extinguishes the obligation actually secured would also discharge the mortgage or trust deed, and here consequently the security for the several claims. *Atwater* v. *Underhill*, 22 N. J. Eq. 599. Thus either joint payee can give an effective release of the joint claim, upon payment to him alone. *Wright* v. *Ware*, 58 Ga. 150. Or if one died, the survivor would have a clear title to the joint claim, and so to the security. *Blake* v. *Sanborn*, 8 Gray (Mass.) 154. Such a situation is guarded against by considering a fiduciary relationship to have been established between the two sets of claims, the joint set substantially being security for the several. Thus the obligees in their joint capacity could be said to hold the joint claims in trust for themselves as several obligees. But see *Bates* v. *Coe*, 10 Conn. 280, 293.

PARTIES — AGENCY — PRINCIPAL'S LIABILITY TO THIRD PERSONS IN TORT — JOINDER OF PRINCIPAL AND WILFUL AGENT. — The plaintiff sued a railroad and its engineer jointly, for personal injuries. The engineer was charged with wanton or wilful misconduct. The defendants demurred. *Held*, that the servant being liable in trespass, and the railroad in case, there was fatal misjoinder of parties. *Louisville & Nashville Railroad Co.* v. *Abernethy*, 73 So. 103 (Ala.).

Case has generally been held the proper form of action against a master for his servants' wanton acts, even though the servants' liability lay in trespass. *Mossemar* v. *Callendar, etc. Co.*, 24 R. I. 168, 52 Atl. 806. *Contra*, *Brokaw* v. *New Jersey R., etc. Co.*, 32 N. J. L. 328. *Cf. Hewitt* v. *Swift*, 3 Allen (Mass.) 425. Courts were formerly inclined to consider that the master's liability for the acts of his servant was original, not imputed. Therefore, they argued, case properly lay, for an original liability seemed indirect. *Cf. Sharrod* v. *London, etc. Ry. Co.*, 4 Exch. 580, 585; *Southern Bell Telephone, etc. Co.* v. *Francis*, 109 Ala. 224, 234, 19 So. 1, 4. The present tendency is to consider the liability imputed. It must therefore be of the same sort as the servant's, as if the master had acted himself. See *Schumpert* v. *Southern Ry. Co.*, 65 S. C. 332, 337, 43 S. E. 813, 815. Yet the courts have not changed their position. But no matter what the master's liability may be, the propriety of joining master and servant is still in question. The courts are squarely split. See *Alabama Southern Ry.* v. *Thompson*, 200 U. S. 206, 218. Some disallow joinder, even where both are liable in case. *Parsons* v. *Winchell*, 5 Cush. (Mass.) 592; *Warax* v. *Cincinnati, etc. R. Co.*, 72 Fed. 637. *Contra*, *Greenberg* v. *Whitcomb Lumber Co.*, 90 Wis. 225, 63 N. W. 93. For it is felt that only real actors can be joint tortfeasors. On the other hand, joinder was allowed by a court conceiving the master's imputed liability to lie in trespass. *Brokaw* v. *New Jersey R., etc. Co.*, *supra*. Where, as in the principal decision, the respective liabilities are in case and trespass, misjoinder is more arguable. The state code allowed all actions *ex delictu* to be joined, but did not abolish forms of action. Now the diverse liability implied by the diverse forms of action has been considered fatal to joinder of parties. *Gustafson* v. *Chicago, etc. Ry. Co.*, 128 Fed. 85; *Southern Ry. Co.* v. *Hanby*, 166 Ala. 641, 52 So. 334. But where the code abolished forms of action,

joinder was held to have become proper. *Schumpert* v. *Southern Ry. Co., supra; Howe* v. *Northern Pacific R. Co.*, 30 Wash. 569, 70 Pac. 1100. It seems highly technical to make the propriety of joinder of parties depend on forms of action. The liability of master and servant is essentially joint, even if the theory of identification be rejected. It seems more joint than that of accidentally concurring tortfeasors. And the practical convenience of joinder should override technicalities.

PROXIMATE CAUSE — INTERVENING CAUSES — INTERVENTION OF NEGLIGENT ACT OF THIRD PARTY. — The defendant, a wholesale dealer in oils, supplied a retail dealer with a mixture of gasoline and kerosene instead of pure kerosene. The retail dealer discovered that the oil was not all right, and notified the defendant, who promised to take the oil back. Relying on certain tests, however, the retailer decided that two of the cans contained all kerosene, and negligently sold them to the plaintiff, who, without contributory negligence, sustained injuries from an explosion of the oil. *Held*, that the defendant is not liable. *Catlin* v. *Union Oil Co. of California*, 161 Pac. 9 (Cal.).

In most jurisdictions the liability of the vendor of an article is limited to the first vendee. *Winterbottom* v. *Wright*, 10 M. & W. 109; *Heiser* v. *Kingsland Co.*, 110 Mo. 605, 19 S. W. 630; *Kuelling* v. *Roderick Mfg. Co.*, 88 App. Div. 309, 84 N. Y. Supp. 622. *Contra*, *McPherson* v. *Buick Motor Co.*, 217 N. Y. 382, 111 N. E. 1050. See 29 HARV. L. REV. 866. But where the article is of an intrinsically dangerous nature, an exception is made, and the vendor is held liable for negligence to sub-vendees. *Bishop* v. *Weber*, 139 Mass. 411, 1 N. E. 154; *Faro* v. *Remington Arms Co.*, 67 App. Div. 414, 73 N. Y. Supp. 788. Analogous cases justify the court's assumption in the principal case that gasoline is such a dangerous article. *Standard Oil Co.* v. *Wakefield*, 102 Ga. 824, 47 S. E. 830; *Riggs* v. *Standard Oil Co.*, 130 Fed. 199. But *cf. Goodlander Mill Co.* v. *Standard Oil Co.*, 63 Fed. 400. The question of proximate cause, however, remains to be dealt with. The act of the retailer, which was unforeseeable, considering that he knew there was something wrong with the oil, intervened and destroyed the proximity of causation. Or, to look at it another way, the risk created by the defendant came to an end when the nature of the oil was discovered, and the risk from which the plaintiff suffered was a new risk, created by the negligent act of the retailer. *Hendrickson* v. *Commonwealth*, 85 Ky. 281, 3 S. W. 166; *Chaddock* v. *Plummer*, 88 Mich. 225, 50 N. W. 135; *Pittsburgh Reduction Co.* v. *Horton*, 87 Ark. 576, 113 S. W. 647.

SURETYSHIP — SURETY'S DEFENSES — EFFECT OF NOTICE BY SURETY THAT HE WILL NOT REMAIN LIABLE. — In July, 1911, the defendant became surety on a bond given by a collector to his principal. In March, 1912, the defendant notified the principal that he would no longer remain liable. Later the principal seeks to recover from the defendant for defaults of the collector. *Held*, that he may recover only for the defaults occurring before and within a reasonable time after the notice. *Ricketson* v. *Nizolte*, 98 Atl. 801 (Vt.).

For a discussion of the principles involved, see NOTES, p. 494.

TAXATION — FEDERAL CORPORATION TAX — INCOME OF A MINING COMPANY. — Corporations were formed to hold certain lands and distribute among the stockholders the proceeds of any disposition thereof. Part of the property, containing ore deposits, was leased, the lessees to pay royalties on all ore mined. Under the Corporation Tax Law of 1909 (36 STAT. AT L. 112) the companies were assessed upon the aggregate royalties as their gross income and no deductions for depreciation were made on account of the depletion of the ore deposits. Suit is brought to recover these taxes, paid under protest. *Held*, that no recovery should be allowed. *Von Baumbach* v. *Sargent Land Co.*, U. S. Sup. Ct., Oct. Term, 1916, No. 286.